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Technology, Inc.*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

JON PAUL FRANCK,

Plaintiff,

vs.

WRIGHT MEDICAL TECHNOLOGY, INC.,
a Delaware corporation; and DOES 1-50,

Defendant.

NOTICE OF REMOVAL

(Removed from the Fourth Judicial District
Court, Provo District, State of Utah, Case No.
190400016)

Civil No. 2:19-cv-00061-DBP
Magistrate Judge Dustin B. Pead

JURY TRIAL DEMANDED

Pursuant to [28 U.S.C. §§ 1332\(a\), 1441\(b\)](#) and [1446](#) and any other applicable laws, Defendant Wright Medical Technology, Inc. (“Wright Medical” or “Defendant”), by and through its attorneys, hereby gives notice of removal of the above-captioned action, entitled *Jon Paul Franck v. Wright Medical Technology, Inc., a Delaware corporation; and Does 1-50*, Case No. 190400016 (the “State Court Action”), from the Fourth Judicial District Court, Provo District, State of Utah, to the United States District Court for the District of Utah. Pursuant to [28 U.S.C. § 1446\(a\)](#), a true and legible copy of Plaintiff’s Complaint is attached hereto as Exhibit A.

As grounds for removal, Wright Medical hereby states the following:

I. PROCEDURAL HISTORY

1. On or about January 4, 2019, Plaintiff commenced this products liability action in the Fourth Judicial District Court, Provo District, State of Utah, naming as defendants Wright Medical and Does 1-50. Attached as Exhibit A is the Summons and Complaint served on Wright Medical.

2. Wright Medical was served with the Summons and Complaint on January 8, 2019. *See* Ex. A.

3. Upon information and belief, no other defendants have been served with the Summons or Complaint. Aside from the Complaint, and a Return of Service and Summons that was filed on January 11, 2019 (Ex. A), there have been no other filings in the State Court Action. Attached as Exhibit B is the current docket sheet for the State Court Action.

4. Removal to this District is proper because the Fourth Judicial District Court, Provo District, State of Utah, is within the United States District Court for the District of Utah. [28 U.S.C. §§ 1332, 1441, and 1446](#).

II. BASIS FOR REMOVAL

5. Wright Medical bases its removal on diversity jurisdiction pursuant to [28 U.S.C. §§ 1332, 1441, and 1446](#).

6. Removal of this action is proper under [28 U.S.C. §§ 1441](#). The court has original jurisdiction over this action pursuant to [28 U.S.C. § 1332\(a\)](#) as it is a civil action between citizens of different states in which the amount-in-controversy exceeds the sum of \$75,000, exclusive of interests and costs.

7. This removal is timely, the procedural requirements for removal are satisfied, and this Court has subject matter jurisdiction over this action pursuant to [28 U.S.C. § 1332\(a\)](#). This Notice of Removal by Wright Medical is Wright Medical's first appearance in this case.

8. This Notice of Removal is filed in the United States District Court for the District of Utah within the time allowed by law for removal of civil actions, that is, within thirty (30) days of Wright Medical's receipt on January 8, 2019 of the summons and Complaint.

A. Diversity of Jurisdiction Exists Between Plaintiff and the Properly Joined and Served Defendant.

9. The Complaint alleges that Plaintiff is a resident of Utah. (Ex. A, ¶ 1). Accordingly, Plaintiff is a citizen of Utah. [Middleton v. Stephenson](#), 749 F.3d 1197, 1200 (10th Cir. 2014).

10. Wright Medical is a Delaware corporation with its principal place of business in Tennessee. Therefore, Wright Medical is a citizen of Delaware and Tennessee. *See* [28 U.S.C. § 1332\(c\)\(1\)](#) (stating a "corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business").

11. The citizenship of Does 1-50 is irrelevant because "[t]he citizenship of defendants sued under fictitious names shall be disregarded" "in determining whether a civil action is removable on the basis of" diversity jurisdiction." [28 U.S.C. § 1441\(b\)\(1\)](#).

12. Because Plaintiff and Wright Medical are citizens of different states, there is complete diversity of citizenship for jurisdiction purposes.

B. The Amount in Controversy Requirement is Satisfied.

13. Plaintiff alleges that this case "has a value of more than \$300,000" (Ex. A, ¶ 8).

14. Accordingly, as on the face of the Complaint the amount in controversy exceeds \$75,000, the amount in controversy requirement is satisfied. See *Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, 1183 (10th Cir. 2000) (holding plaintiff's allegations in complaint as to amount in controversy sufficient to show jurisdictional amount is met).

III. CONCLUSION

15. Pursuant to 28 U.S.C. § 1446(d), Wright Medical shall give Plaintiff written notice of the filing of this Notice of Removal.

16. Pursuant to 28 U.S.C. § 1446(d), Wright Medical shall file the written notice of the filing of this Notice of Removal with the Fourth Judicial District Court, Provo District, State of Utah, attaching as Exhibit 1 thereto a copy of this Notice of Removal and the documents attached to this Notice of Removal.

17. The only non-fictional Defendant is Wright Medical. Accordingly, there are no other actual defendants that would be required to join in this removal. See 28 U.S.C. § 1446(b)(2)(A).

18. In removing this action, Wright Medical does not intend to waive any rights or defenses to which it is otherwise entitled, and Wright Medical expressly reserves the right to assert all such defenses at a later time, including as to service of process, venue, or jurisdiction.

WHEREFORE, for the reasons fully set forth herein, Wright Medical hereby gives notice that the case now pending in the Fourth Judicial District Court, Provo District, State of Utah (the "State Court Action"), is removed to the United States District Court for the District of Utah.

Date: January 28th, 2019.

Respectfully submitted,

/s/ Elisabeth M. McOmber

Elisabeth M. McOmber, Esquire

SNELL & WILMER

*Attorneys for Defendant Wright Medical
Technology, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on January 28th, 2019 a copy of the foregoing DEFENDANT’S NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. §§ 1332(a), 1441(b), AND 1446 has been filed via the Court CM/ECF system, which effectuated service electronically via email upon all counsel of record in this action, and has been served via U.S. Mail, first class postage prepaid, upon the following:

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/s/ Elisabeth M. McOmber

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